APPEAL NO. 170251
FILED APRIL 11, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). An expedited contested case hearing (ECCH) was held on January 9, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that (Dr. BR) was not appointed to serve as designated doctor in accordance with Section 408.0041 and Texas Department of Insurance, Division of Workers' Compensation (Division) rules.

The appellant (claimant) appealed the hearing officer's determination arguing that he had never seen a designated doctor in the case and that the determination of (Dr. BF) that the claimant has no permanent impairment is contrary to the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

It is undisputed that the claimant sustained a compensable injury on (date of injury), including a puncture wound to the right hand. The claimant filed a Request for Designated Doctor Examination (DWC-32) on November 10, 2016, seeking the opinion of a designated doctor concerning whether the claimant has reached maximum medical improvement (MMI) and, if so, his impairment rating (IR) and whether the compensable injury extends to brachial neuritis and bilateral carpal tunnel syndrome. By order dated December 5, 2016, in response to the claimant's DWC-32, the Division scheduled a designated doctor examination with Dr. BR on December 23, 2016. Although not in evidence, the carrier filed a motion requesting a stay of the designated doctor appointment and scheduling of this ECCH to determine whether Dr. BR was properly appointed to serve as designated doctor pursuant to Section 408.0041 and Division rules. By order dated December 15, 2016, the hearing officer granted the carrier's motion.

Section 408.123(e) provides that except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. 28 TEX. ADMIN. CODE § 130.12(b) (Rule 130.12(b)) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means; that the notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c); and

that the 90-day period begins on the day after the written notice is delivered to the party wishing to dispute a certification of MMI or an IR assignment, or both.

Section 408.123 also provides in part:

> (f) An employee's first certification of [MMI] or assignment of an [IR] may be disputed after the period described by Subsection (e) if:
>
> (1) compelling medical evidence exists of:
>
> (A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR];
>
> (B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or
>
> (C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The hearing officer correctly found that the issue of extent of the compensable injury to include brachial neuritis and bilateral carpal tunnel syndrome has previously been decided by the Division in Appeals Panel Decision (APD) 100768-s, decided August 3, 2010. However, it is clear from the decision, the record, the argument of the parties and the hearing officer's Finding of Fact No. 3 that the issue of finality of Dr. BF's February 9, 2010, certification has not been resolved, that the issue of whether the first certification of MMI/IR became final pursuant to Section 408.123 and Rule 130.12 was made a basis of the hearing officer's decision that Dr. BR was not properly appointed as designated doctor in this matter; however, she failed to add the issue of finality and include findings of fact, conclusions of law and a decision concerning such issue in her Decision and Order. We hold under the facts of this case where finality of the first valid certification of MMI/IR is a basis for the carrier's argument and the hearing officer's decision that a designated doctor was not properly appointed to address MMI/IR, the hearing officer erred in not adding and making a determination regarding the issue of finality.

We accordingly reverse the hearing officer's decision and remand the issues of whether Dr. BR was appointed as designated doctor in accordance with Section 408.0041 and Division rules and whether Dr. BF's February 9, 2010 certification of MMI/IR became final pursuant to Section 408.123 and Rule 130.12 to the hearing officer to make findings of fact, conclusions of law, and a decision consistent with the evidence.

REMAND INSTRUCTIONS

On remand, the hearing officer is to add the issue of whether Dr. BF's February 9, 2010, certification of MMI/IR became final pursuant to Section 408.123 and Rule 130.12 and make findings of fact, conclusions of law, and a decision regarding the issues of finality and whether Dr. BR was properly appointed as designated doctor in accordance with Section 408.0041 and Division rules that are consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **AMERISURE MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN MILLER
5221 NORTH O'CONNOR BLVD., SUITE 400
IRVING, TEXAS 75039-3711.

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge